

Memorandum of Understanding May XX, 2011

This memorandum outlines areas of agreement between Princeton University and the municipalities of Princeton Borough and Princeton Township in regard to the Arts and Transit proposal. The three entities have come together because of their common desire to assure continuing and improved transportation service along the NJ Transit Princeton Branch, known as the Dinky line. With the understanding that enhanced service will benefit all who travel to and from Princeton, the three parties agree to implement the following strategies as outlined in this Memorandum of Understanding.

Princeton University has proposed zoning that would establish a new Arts and Transit District that is situated within the municipal boundaries of both the Borough and the Township. The University has submitted conceptual zoning ordinances to the governing bodies of both municipalities, and those conceptual zoning ordinances will be subject to statutory public processes such as those set forth in the Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-1 *et seq.*, including public hearing(s) by the governing bodies of the municipalities and public hearing(s) by the Princeton Regional Planning Board (“Planning Board”) concerning the governing bodies’ referral of the ordinances and potential associated amendments to the Community Master Plan. If any zoning ordinances related to the University’s Arts and Transit District are voted upon and approved in the aforementioned public forums, any subsequent development application made by Princeton University pursuant to such zoning ordinances would have to be reviewed by and voted upon in public hearings before the Planning Board pursuant to the requirements of the MLUL.

Since proper planning for future transportation service along the Dinky line is in the public interest, the parties wish to be prepared to move forward with appropriate transportation initiatives. This MOU is not being entered into with any representation by the municipalities that any conceptual zoning ordinances proposed by Princeton University will be adopted or that any future development application by made by Princeton University pursuant to any zoning related to an Arts and Transit District will be granted by the Planning Board. Any conceptual zoning ordinances and any future development application are subject to public hearings before the governing bodies of the municipality and the Planning Board, and the execution of this MOU has no impact on the bearing of those public hearings.

The provisions of this MOU will become effective if and when the Planning Board adopts a resolution granting final site plan approval to Princeton University for its Arts and Transit proposal, with said resolution containing conditions of approval that are acceptable to Princeton University.

Preserving and Enhancing the Dinky – Existing Heavy Rail Service

1. Upon approval of this agreement by the governing bodies of Princeton Borough and Princeton Township, the University, in conjunction with the Borough and the Township, will seek approval from New Jersey Transit to open the existing north station waiting room to the public. Upon receiving such approval, the University will open the station for

a minimum of five hours each weekday, exact times to be mutually determined by an assessment of usage. The waiting room will be heated, lighted, with available restroom facilities. The waiting room shall also include any other amenities and improvements that may be mutually agreed upon. All services, amenities, and improvements shall be at the sole cost of the University and/or New Jersey Transit. The north station building will remain open as a waiting room until the discontinuation of train service to the current location. Six months after the opening of the waiting room, the University may elect to terminate or modify this provision if the Planning Board has not adopted a resolution granting final site plan approval to Princeton University for its Arts and Transit project.

2. The University will work together with Princeton Borough and Princeton Township to encourage New Jersey Transit to provide additional Dinky service, including during off-peak hours and weekend hours.
3. The University will work with the municipalities and local merchants to develop a formal plan to promote Dinky ridership, including but not limited to train ticket receipts being utilized to obtain discounts at McCarter Theater, University athletic events and local stores and restaurants.
4. The University shall continue to encourage additional use of the Dinky through the mass transit subsidy it provides to faculty, staff, and graduate students under its Transportation Demand Management (TDM) program.
5. The University agrees that if the present station terminus is moved to the proposed new location, it will take no action to move the station farther south as long as heavy rail service is in existence.
6. The Arts & Transit plan further proposes to increase Dinky ridership by:
 - 6.1 Providing an attractive new station (described below) and surrounding area, including easy access to parking, drop-off, taxis, and buses.
 - 6.2 Creating better bike access and shuttle connections, including TigerTransit scheduling as described below.
 - 6.3 Adding new passenger destinations, including indoor arts programming, outdoor arts programming, community programming, and retail venues.
 - 6.3.1 It is anticipated that expansion of the University's arts programming will result in more artists, students and audience members traveling between Princeton and New York. It is further expected that there will be performers, performances and facilities in Princeton that will not be available in New York.
 - 6.3.2 It is anticipated that some of the outdoor programming in the area, apart from the arts programming, will attract interest outside of Princeton, e.g.,

outdoor chess tournaments, an outdoor summer movie series, etc. There will also be outdoor theater, music, and dance performances.

7. The University will schedule its TigerTransit shuttle system to meet all incoming Dinky trains and travel to Nassau St. during morning and evening peak commuter hours. During off-peak hours, TigerTransit shuttles also would stop regularly at the proposed new Dinky station. In addition, as it relates to this shuttle service, the University will:

- 7.1 Immediately develop a public relations program in conjunction with Princeton Borough and Princeton Township, including signage and other forms of promotion, to alert residents that this service is "free and open to the public" for both present and future stations. The metrics of the public relations program and its scheduling shall be determined by mutual agreement of the three parties.

- 7.2 The University will pay for and install an electronic route map and shuttle locator system for TigerTransit at the new station that would inform arriving passengers when the next shuttle will be arriving.

- 7.3 Recognizing a shared interest of the University and the municipalities in getting Transit riders to Nassau Street without excessive delays, the University will utilize Elm Drive, or other internal campus roads, as an alternative route for the TigerTransit shuttles from the new station to Nassau Street should traffic conditions along Alexander and or University Place cause repeated delays.

- 7.4 The University will work with the municipalities to design and help fund a collector transit system that will bring passengers from collection points in both municipalities to the new station.

- 7.5 Similar to the \$10,000 contribution that the University made in 2011 to assist in launching the service, the University will provide an annual contribution of \$10,000 to the municipalities' Community Transportation Coordination Initiative to help offset the costs of extending the FreeB shuttle service to mid day hours. This annual contribution will last for two years at a minimum from its initiation and it may be directed toward compliance with the goal stated in paragraph 7.4 above, in which case, it may be ongoing. Any extension past the initial two-year term will be solely at the discretion of the University.

8. Pursuant to its Arts & Transit proposal, the University shall construct a new rail station adjacent to a Wawa (or similar store) that is open 24/7. The station proposed by the University would include:

- 8.1 Heated/cooled waiting room

- 8.2 Restrooms

- 8.3 Ticket machines

- 8.4 Electronic information kiosk

- 8.5 Community bulletin board
 - 8.6 Electronic arrival and departure notification for the Dinky (pending NJT capability)
 - 8.7 Electronic arrival and departure notification for TigerTransit
 - 8.8 ATM
 - 8.9 Public library book drop off/pick up
 - 8.10.1 Secure/covered bike parking
 - 8.10.2 Changing areas
 - 8.10.3 Bike lockers
 - 8.10.4 Bike rental system
 - 8.10.5 Rider support (air for tires, tools for quick fixes)
 - 8.10.6 An enhanced bike path system to link campus and community bike routes to the station area.
9. Also pursuant to its Arts & Transit proposal, the University shall construct a new transit plaza and parking areas that provide easy access to the Dinky for riders who go to the station by car. Features of the plaza and parking areas in the University's proposal include:
- 9.1 Convenient drop off and pickup area.
 - 9.2 The same number of on-site commuter and all-day parking spaces as currently exist in the vicinity of the current rail station, in both permit and metered spaces, with easy access to and from Alexander Street. The total number of short-term parking spaces provided in the University's Arts & Transit proposal exceeds the number of short-term spaces in the vicinity of the current station.
 - 9.3 Easy access to shuttles, jitneys and taxis.
10. The University's long-term development plan for its lands along south Alexander as a residential mixed-use neighborhood with well-designed bike and pedestrian connections would add several hundred residents to the immediate area and facilitate access to mass transit.

Next Generation Transit Service

11. Coincident with the filing of the Planning Board application for phase I of the Arts and Transit proposal, the University and the municipalities agree to participate in a joint task force ("The Alexander Street/University Place Transit Task Force) consisting of six members with no less than one appointed representative of Princeton Borough Council and Princeton Township Committee with each town to have one additional appointed representative. There shall also be two representatives from Princeton University.
12. The task force is charged as follows:

- 12.1 To evaluate the desirability of creating an improvement district or other legal entity to administer the mass transit needs of the Alexander Street and University Place corridor and to evaluate the legal basis for establishing such.
- 12.2 To evaluate long-term transit needs and service to Nassau Street by conducting a formal transit study and to examine the potential benefits, including economic benefits, of implementing such service. As an initial step, the University, Borough and Township will provide funding to complete this study with the University paying 50% and each municipality contributing 25%. The scope and the ultimate cost of the study shall be determined by the task force. The task force shall study, among other things, a light rail system. Issues to be considered in connection with the light rail transit system shall include: vehicle type, routes and alternates, loop vs. single line, schedule, electrical distribution network, solar powered, peak load capacity, stations (number and location), parking (primary and alternative commuter locations), financing, public-private possibilities, cost, NJ Transit, development opportunities, potential ridership, operating authority, schedule, NE corridor connections, ticketing, pedestrian conflict issues, vehicular conflict issues, implementation strategies, staging strategies, participation by West Windsor Township, and other related issues as they arise.
- 12.3 To produce a report for presentation to and consideration by the governing bodies of Princeton Borough and Princeton Township and the University not later than 8 months after being established. The work of the task force shall be deemed complete upon acceptance of the report by the three entities.
13. A mass transit trust fund will be established for studies, planning and implementation of improvements to transit needs of the Princeton community. Princeton University will provide \$250,000 to establish the trust fund. Distributions from this fund will be made by majority vote of the members of the fund who will include equal numbers of representatives from the Borough, Township and University. Should the Borough and the Township consolidate, the new municipality will retain two thirds of the votes.
14. Subject to the conditions stated below, Princeton University hereby commits to provide a deed of easement for a permanent, perpetual right of way exclusively to permit and sufficient to accommodate light rail service or other mass transit service, as described below. In addition, the two municipalities agree to provide a necessary right of way in public owned property, as needed. The easements shall not be granted and recorded until such time when the mass transit service operator and/or the municipalities and the University are prepared to apply for the requisite approvals and permits to establish light rail service or other mass transit service, as described below. The easement shall terminate if the light rail service or other mass transit service use is abandoned for a period of three years or if either municipality fails to deliver, or later terminates, a right of way for the service link to Nassau Street. It is understood that the light rail or mass transit service provider shall be fully responsible for any maintenance and operation of mass transit service across the University-provided right of way. The University-

provided right of way will be established from the existing NJ Transit right of way connecting to Alexander Street either at the proposed new station location or at a point to be mutually agreed farther south. The University will enter into agreements with the municipalities that preserve a right of way from future development. The right of way shall be adequate for vehicle width and clearance and shall be legally enforceable. No party to this agreement will seek compensation in connection with the use of any right of way identified herein. The Borough's legal counsel has prepared a memorandum that opines that the right of way is adequately defined herein so as to be legally enforceable, a copy of which is attached hereto as Exhibit A. The University has had an opportunity to review this memorandum with its counsel and concurs that the right of way is adequately defined herein so as to be legally enforceable and agrees to waive any right to contest the enforceability of its commitment to provide the right of way agreed upon herein. If not used for transit purposes within 50 years from the date of the commencement of train service from the new station location, the commitment for the right of way set forth in this memorandum will expire.

Miscellaneous

15. Any waiver, modification, consent, or acquiescence with respect to any provision of this MOU shall be set forth in writing and duly executed by or on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.
16. In the event that any provision of this MOU should be breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.
17. This MOU shall be construed and enforced under the laws of the State of New Jersey without regard to Conflicts of Laws rules.
18. This MOU shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns.
19. Wherever possible, each provision of this MOU shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this MOU shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this MOU.
20. This MOU may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this MOU attached thereto.

21. Each entity executing this MOU hereby represents and warrants that he, she, or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he, she, or it is executing this MOU to the terms hereof.
22. Notwithstanding anything to the contrary contained herein, this MOU shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render any party liable for any of the debts or obligations of another, except as specifically contemplated herein.

IN WITNESS WHEREOF, the Borough of Princeton, the Township of Princeton and Princeton University have caused this MOU to be executed in their respective names by their duly authorized officers, as of the date first above written.

<p>WITNESS</p> <p>_____</p>	<p>Borough of Princeton</p> <p>_____</p> <p>By: Mayor Mildred Trotman Dated:</p>
<p>WITNESS</p> <p>_____</p>	<p>Township of Princeton</p> <p>_____</p> <p>By: Mayor Chad Goerner Dated:</p>
<p>WITNESS</p> <p>_____</p>	<p>Princeton University</p> <p>_____</p> <p>By: President Shirley Tilghman Dated:</p>

EXHIBIT A



HILL WALLACK LLP

ATTORNEYS AT LAW

Princeton, NJ / Atlantic City, NJ / Yardley, PA
WWW.HILLWALLACK.COM

To: Princeton Borough Council
From: Henry T. Chou, Esq.
Date: May 2, 2011
Re: MOU provision on future easement for rail right of way – “EXHIBIT A”

QUESTION PRESENTED

Is the provision of the Memorandum of Understanding (“MOU”) between Princeton Borough, Princeton Township and Princeton University concerning the parties’ commitment to provide a right of way for future rail uses (Paragraph 14) adequately defined and legally enforceable?

ANALYSIS

Yes. In New Jersey, the courts routinely enforce MOUs as legally binding contracts if they impose cognizable obligations upon the parties based upon mutual consideration and are signed by the parties. See, e.g., Livingston Builders, Inc. v. Township of Livingston, 309 N.J. Super. 370, 377 (App. Div. 1998); Flores v. Murray, 2007 WL 3034512 (N.J. Super. App. Div.); Anderson v. Ludeking, 2008 WL 4630697 (N.J. Super. App. Div.); Mitchell v. Mitchell, 2010 WL 289096 (N.J. Super. App. Div.).

The MOU at issue imposes cognizable obligations upon all of the parties and mutual consideration is present. Through the MOU, residents of both municipalities will receive the

benefit of improved rail transportation services associated with Princeton University's development activities, and Princeton University will receive the benefit of the municipalities' cooperation in the development of a formal plan to promote increased patronage of the McCarter Theater and Princeton University athletic events. Additionally, the MOU will be signed by duly authorized representatives of all parties.

Although Paragraph 14 concerning the commitment of the parties to provide deeds of easement for a right of way to accommodate future rail service is not specifically defined, i.e., with a metes and bounds description, it describes the right of way with a fair degree of detail, as follows:

“Subject to the conditions stated below, Princeton University hereby commits to provide a deed of easement for a permanent, perpetual right of way exclusively to permit and sufficient to accommodate light rail service or other mass transit service, as described below. In addition, the two municipalities agree to provide a necessary right of way in public owned property, as needed. The easements shall not be granted and recorded until such time when the mass transit service operator and/or the municipalities and the University are prepared to apply for the requisite approvals and permits to establish light rail service or other mass transit service, as described below. The easement shall terminate if the light rail service or other mass transit service use is abandoned for a period of three years or if either municipality fails to deliver, or later terminates, a right of way for the service link to Nassau Street. It is understood that the light rail or mass transit service provider shall be fully responsible for any maintenance and operation of mass transit service across the University-provided right of way. The University-provided right of way will be established from the existing NJ Transit right of way connecting to Alexander Street either at the proposed new station location or at a point to be mutually agreed farther south. The University will enter into agreements with the municipalities that preserve a right of way from future development. The right of way shall be adequate for vehicle width and clearance and shall be legally enforceable. No party to this agreement will seek compensation in connection with the use of any right of way identified herein. The Borough's legal counsel has prepared a memorandum that opines that the right of way is adequately defined herein so as to be legally enforceable, a copy of which is attached hereto as Exhibit A. The University has had an opportunity to review this memorandum with its counsel and concurs that the right of way is adequately defined herein so as to be legally enforceable and agrees to waive any right to contest the enforceability of its commitment to provide the right of way

agreed upon herein. If not used for transit purposes within 50 years from the date of the commencement of train service from the new station location, the commitment for the right of way set forth in this memorandum will expire.”

In New Jersey, a contract is unenforceable for vagueness when its terms are too indefinite to allow a court to ascertain with reasonable certainty what each party has promised to do.

Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992). The courts focus on the performance promised in testing an agreement for vagueness. See Malaker Corp. Stockholders Protective Comm. v. First Jersey Nat'l Bank, 163 N.J. Super. 463, 474, (App.Div.1978) (“An agreement so deficient in the specification of its essential terms that the performance by each party cannot be ascertained with reasonable certainty is not a contract, and clearly is not an enforceable one.”) (citing Friedman v. Tappan Dev. Corp., 22 N.J. 523, 531 (1956)), certif. denied, 79 N.J. 488 (1979). This does not mean that each term must be exactly spelled out. Where the court can determine the contract's “essential terms” to which the parties manifested an intent to be bound, the contract is enforceable. Ryan, 128 N.J. at 435. The Court notes by analogy New Jersey law providing that a contract for the sale of goods will not fail if the parties intended to agree and there is a “reasonably certain basis” for crafting a remedy even though some terms are left open. N.J.S.A. 12A:2-204; Truex v. Ocean Dodge, Inc., 219 N.J. Super. 44, 50 (App.Div.1987).

The law generally and in New Jersey does not favor voiding a contract for vagueness. See E. Allen Farnsworth, Contracts § 3.27 at 208-09 (2d ed. 1990); Paley v. Barton Savs. & Loan Ass'n, 82 N.J. Super. 75, 83 (App. Div.), certif. denied, 41 N.J. 602 (1964). The courts will not scruple at filling gaps or interpreting ambiguous terms where there is evidence of a manifestation of assent to enter into a bargain. See Paley, 82 N.J. Super. at 83; Heim v. Shore, 56 N.J. Super. 62, 73 (App.Div.1959); 4 Samuel Williston, Williston on Contracts, § 4:18 at 421-22 (4th ed. 1990). Thus, a promise to provide “the usual sponsorship fees” for a bowling team was

sufficient. Leitner v. Braen, 51 N.J. Super. 31, 39-40 (App. Div. 1958). Likewise, an agreement by a savings and loan association to hold \$100,000 available to buy mortgages that a real estate developer hoped to obtain from the future buyers of unbuilt houses was sufficiently definite. Paley, 82 N.J. Super. at 82-84.

A contract may be sufficiently certain even though one party has discretion to choose between material terms. Kleckner v. Mutual Life Ins. Co., 822 F.2d 1316, 1319 (3d Cir.1987). Partial performance by one side of the bargain may, by the specifics of that performance, cure an indefinite term of the agreement. Merrick v. United States, 846 F.2d 725, 726 (Fed. Cir.1988); Restatement (Second) of Contracts, § 34(2) (1979); Joseph M. Perillo, Corbin on Contracts, § 4.7 at 606-08 & n. 2 (rev. ed. 1993). Likewise, even if uncertainty remains, where one party has acted in reliance on an indefinite agreement the courts will act to protect that reliance whether through a contractual or non-contractual remedy. Restatement, supra § 34(3); see also Heim, 56 N.J. Super. at 73.

Paragraph 14 of the MOU concerning the parties' commitment to provide deeds of easement for a right of way to accommodate future rail service is not likely to be interpreted by the courts as void for vagueness. It provides that a "right of way will be established from the existing NJ Transit right of way connecting to Alexander Street either at the proposed new station location or at a point to be mutually agreed farther south." Although this provision does not set forth the exact path of the right of way with a metes and bounds description, it describes a potential path in easily cognizable terms to all parties and leaves no doubt as to the general route by which a future rail line would reach Nassau Street.

Pursuant to the case law cited above, a court would likely interpret Paragraph 14 as legally binding and enforceable, especially, e.g., in scenario where two of the parties perform their obligations by providing deeds of easement for a right of way, but one party refuses to provide a deed of easement even though the route contemplated by the other two parties is consistent with the general description of the route in Paragraph 14.